

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 278 OF 2005

Sau.Mohinibai Shankarlal Rathod
and others.

... Appellants.

Versus.

Taherbhai Tayyabbhai Poonawalla
and others.

... Respondents.

Ms.Sangeeta Shrotriya-Vaidya for the Appellants.

CORAM : ABHAY S. OKA, J.

DATED : 15th March, 2005.

P.C.:

1. Heard the learned Counsel appearing for the Appellants. The Appellants are Plaintiffs in a suit for specific performance of an agreement dated 2nd September 1994. In the pending suit an application was made at Exh.51 by the Appellants/Plaintiffs in which they contended that the Respondents/Defendants have entered into an agreement of lease in respect of a shop premises in the suit property in favour of a third party. The contention raised in the Application is that the Appellants/Plaintiffs have the first right in respect of the suit property. The prayer is that the Appellants be put in possession of the shop premises in the suit property on lease.

2. The suit for specific performance is still pending. During the pendency of the suit for specific performance such a drastic relief of ordering delivery of part of

the suit property in favour of the Appellants/Plaintiffs cannot be granted. Whether the Appellants are to be accepted as tenants or not is for the Respondents/Defendants to decide. The Appellants were not entitled to such a drastic relief of mandatory nature by way of interim relief. Hence the trial Court has rightly rejected the said application.

3. No fault can be found with the discretionary order passed by the trial Court. The Appeal from Order is dismissed with no order as to costs.

Judge.